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COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

CASE NO. INS930417

**CHURCH OF GOD IN CHRIST
HOSPITAL FUND,**

Defendant

REPORT OF DEBORAH V. ELLENBERG, CHIEF HEARING EXAMINER

February 7, 2002

On October 17, 2001, the Bureau of Insurance (the "Bureau") filed a Motion to Expand the Scope of a Rule to Show Cause previously issued by the Commission against the Church of God in Christ Hospital Fund ("Defendant" or "Fund"). In the original Rule, issued on September 6, 1996, the Bureau alleged that Defendant had violated § 38.2-1024 of the Code of Virginia by transacting the business of insurance in Virginia without first obtaining a license from the Commission: to wit: on or about February 11, 1993, the Bureau received a complaint from a resident of Norfolk, Virginia, stating that the Defendant had not paid certain insurance claims, and a further examination indicated that approximately 78 Virginia residents were insured by the Defendant. The original Rule established a procedural schedule including a hearing date and assigned this matter to a Hearing Examiner.

On September 23, 1996, and again on November 18, 1996, C. Gary Chalk, executive administrator of the Fund, wrote to the Bureau on behalf of the Defendant, admitted that Defendant was engaged in the business of insurance, and sought a continuance of the scheduled hearing to allow time to locate a licensed insurer to assume its accident and sickness policies before it discontinued business in Virginia as requested by the Bureau. Upon the Bureau's motions, the Defendant's requests were granted and the case was continued generally.

In its motion seeking to expand the scope of the proceeding, the Bureau alleged that Defendant took no action to place its Virginia policyholders with a licensed insurer and has continued to issue and renew policies of insurance in Virginia without a license. The Bureau contends that there are currently 13 residents of Virginia who have obtained accident and sickness insurance from Defendant and whose policies currently are in force, who may or may not have been a part of the original examination. Those policies therefore may not have been within the scope of the Rule issued in 1996. The Bureau requested that this case be expanded to direct Defendant to also show cause why issuance and maintenance of those 13 policies without a license does not constitute violation of § 38.2-1024 of the Code of Virginia. The Bureau requested that the expanded case be set for hearing.

By Ruling dated November 16, 2001, the case was expanded as requested by the Bureau. Defendant was directed to file an Answer on or before December 20, 2001; warned that it would be in default if it failed to timely file an Answer; and directed to appear before the Commission on January 10, 2002, to show cause, if any, why the Commission should not, in addition to a penalty under Virginia Code § 38.2-218, order Defendant to cease and desist from any conduct which constitutes a violation of Virginia Code § 38.2-1024.

On November 19, 2001, the Commission sent the Ruling to Defendant by regular and certified mail, return receipt requested, pursuant to § 12.1-19.1 of the Code of Virginia. Defendant received the Ruling on December 3, 2001.

Defendant has failed to file a timely Answer denying any of the Bureau's recommendations, and on January 8, 2002, the Bureau filed a Motion for Default Judgment, with a supporting affidavit. On February 4, 2002, the Bureau filed a Supplemental Affidavit. Therein it asserts that certain documents referenced in the earlier affidavit inadvertently were not attached. The Supplemental Affidavit included photocopies of those documents. The two affidavits and accompanying exhibits contain further details of the Bureau's allegations and address the elements of the alleged violations.

Defendant is in default. I therefore find the Bureau's Motion for Default Judgment should be granted. Defendant has waived all objections to the admissibility of evidence. A judgment may be entered against Defendant by default based on its previous admission that it was engaged in the business of insurance without a license and the affidavits filed by the Bureau.

SUMMARY OF THE EVIDENCE

The Fund is a hospital indemnity plan operated in the Commonwealth, and sponsored by the Church of God in Christ, a religious organization headquartered in Memphis, Tennessee.

The Bureau has offered the sworn and uncontested affidavits of Victoria I. Savoy, chief financial auditor of the Bureau's Financial Regulation Division. She confirmed that the Bureau received and reviewed certain documents of the Defendant that were provided to the Bureau pursuant to a subpoena issued by the Commission on March 19, 2001.¹ Those documents include a computer listing of 13 current Virginia participants in the Fund, and enrollment applications for five of those participants that clearly indicate the participants were being enrolled in the Fund to provide them with health insurance coverage.² The Bureau also included a copy of the Fund's Internal Revenue Service Forms 990-EZ and the Fund's Financial Statement, both for the year 2000, offering proof that the Fund received revenue for transacting such business.³ The Bureau also provided a Fund Information Bulletin that is very explicit in its discussion of the Fund business.⁴ It

¹Bureau Motion for Default Judgment, January 8, 2002, at 2; Bureau Supplemental Affidavit, February 4, 2002, at 2.

²Bureau Affidavit, January 8, 2002, at 1; Bureau Supplemental Affidavit, February 4, 2002, at 2-3 and Exhibits A, B-1, B-2, B-3, B-4, and B-5.

³Bureau Affidavit, January 8, 2002, at 1; Bureau Supplemental Affidavit, February 4, 2002, at 3 and Exhibit D.

⁴Bureau Affidavit, January 8, 2002, at 1; Bureau Supplemental Affidavit, February 4, 2002, at 3 and Exhibit E-1.

states clearly that a “certificate” is effective “[i]mmediately upon [issuance] for accidents and thirty (30) days for sickness, and six months for certain sicknesses listed in the certificate under ‘Waiting Periods,’”⁵ It goes on to explain that “the [F]und will pay full benefits regardless of any other insurance...However, under Other Medical Plans #1, #1A, #1B the benefits will reduce to 50% when claim is paid by another insurer. If both do not cover the full hospital bill, the [F]und will increase benefits to cover full hospital.”⁶

The Operating Procedures and Claim Request form also detail when and how to file claims, and direct participants seeking a claim reimbursement to include accident or sickness information, and all doctor and hospital bills with a claim submission.⁷ Based on those documents alone the Commission could conclude that the Defendant is in the business of transacting insurance, but the Bureau also included a copy of two Fund brochures which explicitly define the several coverage plans that participants were invited to elect.⁸ These documents thus provide clear and convincing proof that the Defendant has continued to issue and maintain insurance policies to provide sickness and injury health coverage for 13 Virginia participants. Ms. Savoy also confirmed that the Defendant was not licensed. “[A]s of the date hereof and at no date prior hereto has the Commission issued Church of God in Christ Hospital Fund a license to transact the business of insurance in the Commonwealth of Virginia.”⁹ Moreover, the Defendant has admitted that it transacted the business of insurance without a license.¹⁰

FINDINGS AND RECOMMENDATIONS

Based on the admission of Defendant, the affidavits and supporting documents filed by the Bureau in this case, I find that Defendant has violated § 38.2-1024 of the Virginia Code by transacting the business of insurance and continuing to hold policies for 13 Virginia participants. I further find Defendant should be penalized and enjoined from further violation except as is necessary to maintain existing coverage pending an orderly cessation of business.

I therefore **RECOMMEND** that the Commission enter a Judgment Order against Defendant that:

1. ***ADOPTS*** the findings and recommendations in this Report;
2. ***PERMANENTLY ENJOINS*** Defendant from transacting the business of insurance in Virginia without first obtaining a license from the Bureau to do so pursuant to Chapter 10 of Title 38.2 of the Code of Virginia;

⁵Id.

⁶Id.

⁷Bureau Affidavit, January 8, 2002, at 1; Bureau Supplemental Affidavit, February 4, 2002, at 3 and Exhibits E-2 and E-3.

⁸Bureau Affidavit, January 8, 2002, at 1; Bureau Supplemental Affidavit, February 4, 2002, at 4 and Exhibits E-4 and E-5.

⁹Bureau Supplemental Affidavit, February 4, 2002, at 4.

¹⁰Letters to the Bureau dated September 23, 1996 and November 18, 1996 from C. Gary Chalk, executive administrator.

3. ***DIRECTS*** Defendant to cease and desist immediately from enrolling any new participants, except for newborn children or newly acquired dependents of existing participants;

4. ***REQUIRES*** Defendant to continue to provide insurance coverage to existing participants in Virginia, pay all covered claims incurred by such participants, and wind down its insurance business in Virginia on or before May 31, 2002;

5. ***DIRECTS*** Defendant to submit an affidavit to the Bureau on or before July 1, 2002, confirming that Defendant has paid all claims, has terminated its insurance business in Virginia and has ceased transacting the business of insurance in Virginia;

6. ***DIRECTS*** Defendant to notify all Virginia participants, within 14 days of the Judgment Order, that Defendant must wind down its insurance business by letter, in a form approved by the Bureau;

7. ***DIRECTS*** Defendant to provide the Bureau with copies of the final letters; and

8. ***PENALIZES*** Defendant, pursuant to § 38.2-218, the sum of thirteen thousand dollars (\$13,000) for its violations of § 38.2-1024 of the Code of Virginia.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and Commission Rule 5:16(e)) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within fourteen (14) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

Deborah V. Ellenberg
Chief Hearing Examiner